

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 04 2007

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

SUE BEITIA, CLERK

United States District Court		District HAWAII
Name of Movant ROBERT LUM	Prisoner No. 95160-022	Case No. 03-00560-01 <i>SOM</i>
Place of Confinement FEDERAL CORRECTIONAL INSTITUTION SHERIDAN, OREGON		
UNITED STATES OF AMERICA V. ROBERT LUM (name under which convicted)		
MOTION		
1. Name and location of court which entered the judgment of conviction under attack <u>UNITED STATES</u> <u>DISTRICT COURT FOR THE DISTRICT OF HAWAII</u>		
2. Date of judgment of conviction <u>December 2, 2005</u>		
3. Length of sentence <u>240 months</u>		
4. Nature of offense involved (all counts) <u>Title 21 §§841 and 841(b)(1)(A), Title 21</u> <u>§846 with enhancements Title 21 §§ 851 and 841(b)</u>		
5. What was your plea? (Check one)		
(a) Not guilty <input type="checkbox"/>		
(b) Guilty <input checked="" type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) N/A		
(a) Jury <input type="checkbox"/>		
(b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial?		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Testified at the motion to withdraw the guilty plea.		
8. Did you appeal from the judgment of conviction?		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

AO 243 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(b) Result AFFIRMED

(c) Date of result February , 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

AO 243 (Rev. 5/85)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) Mr. Emmett E. Lee Loy
provided ineffective assistance of counsel, when he allowed
the government to partially read off the colloquy rights
under F.R. Cr.P. Rule 11(c).

B. Ground two: Mr. Lee Loy violated defendant's due process rights

Supporting FACTS (state *briefly* without citing cases or law): Mr. Lee Loy did not have
the court admonish all of the colloquy rights under F.R.Cr.P.
Rule 11(c).

C. Ground three: The United States District Court for the District
of Hawaii violated defendant's due process rights.

Supporting FACTS (state *briefly* without citing cases or law): The District Court did
not completely admonish all of the colloquy rights to where
the defendant knowingly understood all of his rights under
F.R. Cr.P. Rule 11(c).

AO 243 (Rev. 5/85)

D. Ground four: Witnesses provided false information to acquire
the indictment

Supporting FACTS (state *briefly* without citing cases or law): Donald Morton and the
F.B.I. provided false information to get the intrapment
sting to arrest defendant.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

This defendant did not, and still does not understand all
proceedings and procedures without a whole lot of help.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing CLAYTON KIMOTO

(b) At arraignment and plea EMMETT LEE LOY (change of plea)

(c) At trial CYNTHIA A. KAGIWADA (motion to withdraw guilty plea)

(d) At sentencing CYNTHIA A. KAGIWADA

AO 243 (Rev. 5/85)

(e) On appeal CYNTHIA A. KAGIWADA

(f) In any post-conviction proceeding none

(g) On appeal from any adverse ruling in a post-conviction proceeding none

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11/26/02
(date)

RLT
Signature of Movant